

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BARRY C. MCANARNEY, as he is)
EXECUTIVE DIRECTOR, MASSACHUSETTS)
LABORERS' HEALTH AND WELFARE FUND,)
MASSACHUSETTS LABORERS' PENSION)
FUND, and MASSACHUSETTS LABORERS')
ANNUITY FUND; JAMES V. MERLONI, JR.,)
as he is ADMINISTRATOR, NEW ENGLAND)
LABORERS' TRAINING TRUST FUND; and)
JOSEPH BONFIGLIO, as he is TRUSTEE,)
MASSACHUSETTS LABORERS' LEGAL)
SERVICES FUND,)
Plaintiffs,)
v.)
ABSOLUTE ENVIRONMENTAL, INC. AND)
ABSOLUTE ENVIRONMENTAL)
CONTRACTORS, INC.,)
Defendants.)

C.A. No. 15-cv-12985-NMG

**ABSOLUTE ENVIRONMENTAL, INC.
AND ABSOLUTE ENVIRONMENTAL CONTRACTORS, INC.'S
EMERGENCY MOTION TO COMPEL THE PRODUCTION OF
(i) ATTORNEY-CLIENT COMMUNICATIONS
BASED UPON SUBJECT MATTER WAIVER AND
(ii) IMPROPERLY WITHHELD ELECTRONIC DISCOVERY**

Defendants Absolute Environmental, Inc. ("Absolute") and Absolute Environmental Contractors, Inc. ("Absolute Contractors") (together, "Defendants") respectfully submit this memorandum in support of their motion to compel Plaintiffs Funds¹ to (i) produce all documents withheld under a claim of privilege related to and created within a year of the attorney-client

¹ Barry C. McAnarney, as he is Executive Director, Massachusetts Laborers' Health and Welfare Fund, Massachusetts Laborers' Pension Fund and Massachusetts Laborers' Annuity Fund, James V. Merloni, Jr., as he is Administrator, New England Laborers' Training Trust Fund, and Joseph Bonfiglio, as he is Trustee, Massachusetts Laborers' Legal Services Fund.

communications *already disclosed*; (ii) permit questioning of witnesses regarding produced or otherwise disclosed attorney-client communications at deposition and at trial; and (iii) produce electronically stored information responsive to Defendants' requests for documents through the present. Defendants bring this motion on an emergency basis because the discovery at issue undermines the basis of the Funds' claims and impacts the extent to which Defendants may inquire about attorney-client communications at depositions scheduled for this month.²

In further support thereof, Defendants respectfully refer the Court to the Memorandum of Law submitted herewith and incorporated herein by reference.

WHEREFORE, Defendants respectfully request that the Court enter an order in the form of the Proposed Order attached here as **Exhibit A**.

Respectfully submitted,

ABSOLUTE ENVIRONMENTAL, INC. and
ABSOLUTE ENVIRONMENTAL
CONTRACTORS, INC.

/s/ Benjamin J. Wish
Howard M. Cooper (BBO #543842)
Benjamin J. Wish (BBO #672743)
Saraa Basaria (BBO #685705)
TODD & WELD LLP
One Federal Street, 27th Floor
Boston, MA 02110
(ph) (617) 720-2626

June 18, 2018

² The Court recently extended the deadline for the parties to complete fact discovery until September 30, 2018. ECF No. 64.

CERTIFICATE OF SERVICE

I, Benjamin Wish, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this date.

/s/ Benjamin J. Wish

Benjamin Wish

Dated: June 18, 2018

LOCAL RULE 7.1(a)(2) CERTIFICATION

Undersigned counsel certifies that they have conferred with Plaintiffs' counsel in a good faith attempt to resolve or narrow the issues raised in this motion.

/s/ Benjamin J. Wish

Benjamin Wish

Dated: June 18, 2018